UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SENTEGRA, LLC, Plaintiff, v. SAMSUNG ELECTRONICS AMERICA, INC. and SAMSUNG TELECOMMUNICATIONS AMERICA, LLC, Defendants.	No. 15–cv–09266–VEC–SN ORAL ARGUMENT REQUESTED

SAMSUNG'S REPLY MEMORANDUM OF LAW IN SUPPORT OF ITS PARTIAL MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

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INTRODUCTION

Sentegra argues that the ’627 Patent is eligible under Section 101 because it claims an “improved wireless device” rather than an abstract idea. *See* Opp. Br. at 1–4, 7–8, 10, 12–13, and 16. Sentegra’s argument boils down to two incorrect contentions.

First, Sentegra contends that the ’627 Patent is not directed to an abstract idea because it solves a computer technology problem unique to wireless devices: redeeming an electronic ticket on a wireless device. But this assertion is belied by the patent itself, which makes no mention of such a unique problem or the solution to it. To the contrary, the patent explains that the invention simply takes an old concept—securely purchasing a ticket—and applies it to a pre-existing mobile device. This is precisely the type of invention that courts have routinely found ineligible under *Alice*.

Second, Sentegra asserts that the claimed short-range wireless communications hardware, which redeems tickets by communicating with a point-of-sale device, is not generic. As an initial matter, this argument only applies to the minority of claims that claim this functionality (*i.e.*, claims 4 and 11–16). More fundamentally, Sentegra has no basis to assert that the short-range wireless hardware is not generic. Sentegra does not dispute that it has not invented or improved such hardware, and the broad language of the claims and the specification of the ’627 Patent makes clear that this hardware is entirely generic.

In opposition to the *IPXL*-indefiniteness motion, Sentegra argues about claims that it wishes it had drafted, not the claims that actually issued. Specifically, Sentegra argues that the multiple, present-tense active-verb method limitations—the “accesses,” “requests,” “receives,” “communicates,” and “executes” limitations—are mere capabilities, because they are steps that only occur “when executed.” Opp. Br. at 4. But the claims do not say “when executed” or have any other capability-type language. In fact, during prosecution of the patent, Sentegra specifically deleted the phrase "when executed" from earlier draft claim language. Sentegra cannot save its indefinite claims by re-writing the claim language through attorney argument.

ARGUMENT

I. The '627 Patent is invalid because it claims an unpatentable abstract idea.

A. *Alice* motions at the pleading stage do not face a "high burden."

Sentegra argues that dismissal "requires overcoming a high burden—the '*only* plausible reading of the patent must be that there is clear and convincing evidence of ineligibility.'" Opp. Br. at 6 (emphasis added by Sentegra) (quoting *Ultramercial, Inc. v. Hulu, LLC*, 722 F.3d 1335, 1359 (Fed. Cir. 2013)). Sentegra's argument fails for several reasons.

First, Sentegra does not dispute that Section 101 is a question of law. *See* Mot. at 10 (citing cases). Because Sentegra fails to identify any factual or claim construction issues that preclude Samsung's motion, the Court can and should therefore decide this issue now. This is strongly supported by the caselaw: Since *Alice*, the Federal Circuit has affirmed six Section 101 dismissals at the pleading stage, while reversing none.[1]

Second, Sentegra is wrong in asserting that Samsung's burden is somehow "even higher" here, because the PTO "never rejected the application" under Section 101. Opp. Br. at 7. Sentegra identifies no legal authority for this purportedly "higher" burden, and it fails to acknowledge that the '627 Patent issued April 22, 2014, *before* the Supreme Court decided *Alice* on June 19, 2014.[2]

Third, Sentegra's reliance on *Ultramercial* to argue that a "high burden" applies is also highly misleading. That pre-*Alice* decision was vacated by the Supreme Court. On remand to

[1] *Genetic Tecehs. Ltd. v. Merial L.L.C.*, __ F.3d __, __, Nos. 2015-1202, 2015-1203, 2016 WL 1393573 (Fed. Cir. Apr. 8, 2016); *Vehicle Intelligence & Safety LLC v. Mercedes-Benz USA, LLC*, __ Fed. Appx. __, __, 2015 WL 9461707 (Fed. Cir. 2015); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359 (Fed. Cir. 2015); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, 776 F.3d 1343 (Fed. Cir. 2014); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014).

[2] After the *Alice* decision, all pending claims in Sentegra's current patent application based on the same specification as the '627 Patent were rejected by the PTO under Section 101. Irwin Ex. 4 at 4–5.

the Federal Circuit after *Alice*, the "clear and convincing" language cited by Sentegra was not "mention[ed], much less appl[ied]." *Kickstarter, Inc. v. Fan Funded, LLC*, 2015 WL 3947178, at *5 n.7 (S.D.N.Y. June 29, 2015). The Federal Circuit has repeatedly upheld Section 101 dismissals at the pleading stage, and courts in this District have held that the "clear and convincing" standard does not even apply to such motions. *See id.*; *TNS Media Research, LLC v. Tivo Research & Analytics, Inc.*, 2016 WL 817447, at *10 (S.D.N.Y. Feb. 22, 2016). But even if this standard did apply, it would not change the result here, because Sentegra has failed to identify any factual issue that would preclude a legal conclusion that the '627 Patent is ineligible.

B. *Alice* Step 1: The '627 Patent's claims are directed to an abstract idea.

"[T]he first step of *Alice* is, for the most part, a given" for "computer-implemented patents." *Treehouse Avatar, LLC v. Valve Corp.*, 2016 WL 1129726, at *6 (D. Del. Mar. 22, 2016). Sentegra fails to make any argument that yields a different outcome here.

Sentegra argues that the claims of the '627 Patent are not directed to an abstract idea because, as in the *DDR* case, the '627 Patent solves a problem "rooted in computer technology" that is "specific to a handheld device": "how to … store and redeem an electronic ticket where that ticket is not self-validating" Opp. Br. at 8–9. This problem is not unique to wireless devices. *See* Mot. at 10–12, 16. Sentegra does not explain why a paper ticket is self-validating but an electronic ticket is not. A paper ticket can be stolen, and so can a wireless device containing an e-ticket. Moreover, Sentegra cites nothing in the patent that mentions any such unique problem or solves it. Instead, the patent admits that the claimed transactions "function in much the same way as offline transactions." '627 Patent at 16:63–64; *see also* Mot. at 10–11, 15–16. Because securely purchasing—and validating and redeeming—a ticket (electronic or paper) is an abstract idea with "brick-and-mortar" analogues (*see, e.g.*, Mot. at 6 (Ticketmaster example)), Sentegra's "computerized solution" is not patent eligible. *Intellectual Ventures I LLC* *v. Erie Indem. Co.*, 2015 WL 5686643, at *28 (W.D. Pa. Sept. 25, 2015).

Sentegra also attacks Samsung's identification of the abstract idea of "securely purchasing an 'authorization certificate' (e.g., theater tickets)." Opp. Br. at 7 (quoting Mot. at 10). Samsung did not pluck this abstract idea out of thin air. The patent broadly describes the invention as "apparatus, systems, and methods to wirelessly pay for purchases ... and electronically record and wirelessly communicate authorization transactions using [wireless handheld devices]." '627 Patent at 2:6–9; *see also* Claim 1. It also repeatedly states that the invention takes real-world transactions and puts them on a wireless device, as demonstrated by the quotations in Samsung's brief. Mot. at 4–7, 10–11 (citing examples).

Sentegra challenges one of these quotes, arguing that Samsung mischaracterizes the patent's statement that the "transactions would function in much the same way as offline transactions.'" Opp. Br. at 10 (citing Mot. at 1, 3, and 11). According to Sentegra, "transactions" refers to unclaimed "micropayments to a third-party" rather than the "claimed ticketing transactions." *Id.* Not true. The statement is part of a paragraph under the heading "Wireless PDA to/from Internet Online Merchants":

> All *transactions* in every direction would generate a micropayment to Immtec or other host system. *Transactions* would function in much the same way as offline transactions except for the interface.

'627 Patent at 16:61–64 (emphases added). Sentegra's interpretation equating "transactions" and "micropayments" makes little sense in light of the first sentence. In the first sentence, "transactions" *trigger* micropayments; thus, the "transactions" must be *distinct* from the micropayments. *See also* '627 Patent at Fig. 10c (depicting "micropayment" being generated as part of overall "transaction"). The next sentence then explains that these "transactions"—*i.e.*, the claimed "transactions" between a "Wireless PDA" and an "Internet Online Merchant" which trigger a micropayment—function in "much the same way" as offline transactions.

Moreover, the patent includes several other statements making the same point. *See* Mot. at 10–11. Sentegra cannot avoid the clear statements in the specification itself indicating that the '627 Patent is directed to an abstract idea.

C. *Alice* Step 2: The '627 Patent's claims lack an inventive concept.

Sentegra does not dispute that most of the claimed hardware components are generic, Mot. at 12–18, but it repeatedly asserts that the claimed "short-range wireless communication hardware" is inventive and non-generic, Opp. Br. at 1–5, 12–15, 17–19. Sentegra further argues that reaching a contrary conclusion requires "additional discovery, including expert opinion testimony." *Id.* at 14. These assertions are meritless.

First, Sentegra ignores that the "short-range wireless communication hardware" performs no function in most of the claims. Only in claims 4 and 11–16 does it communicate with a point-of-sale device. The other claims are thus invalid even under Sentegra's own arguments.

Next, Sentegra contends that Samsung's assertion that the "short-range" hardware is generic is based solely on "conjecture." *Id.* Not so. The claim language states the limitation broadly and generically. The specification reinforces this by generically referring to "short-range wireless communications hardware" and identifying all known types of this hardware, including "infrared, BLUETOOTH®…, Radio Frequency (RF), ***or other*** short range wireless data communications." '627 Patent at 2:14–16; *id.* at 2:18–19 ("***all short range wireless interfaces*** are referred to as 'infrared'") (emphasis added). The patent provides no "technical details," *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 2015 WL 4184486, at *6 (N.D. Ill. July 10, 2015), and Sentegra does not dispute that it neither invented nor improved short-range wireless hardware. Nor does Sentegra provide any explanation for why this hardware is non-generic. *See* Opp. Br. at 3–4, 12–13. Thus, expert discovery is not necessary, and Sentegra has cited no authority to the contrary. *See Google Inc. v. Unwired Planet, LLC*, CBM2014-00004, 2015 WL 1570273, at *3, *11 (USPTO Apr. 6, 2015) (invalidating claims that included "SRC [short range radio communication]-enabled mobile terminal" limitations because "mobile terminal, SRC [short-range radio] communications technology are all defined in the Specification as including commonly known technical solutions").

The *Katz* case cited by Sentegra is inapposite. Opp. Br. at 15. In that case, the court held that the claimed "record testing structure" was a "specialized" "processor of ***specific*** data for a ***specific*** purpose: the structure ***only*** receives caller data." 2016 WL 1179218, at *6–7 (emphasis added). In contrast to the "specialized" structure "for a specific purpose" in *Katz*, the short-range wireless hardware here is not specialized. At no point does the patent claim or suggest that any specialized configuration or adaptations to any hardware is necessary. In fact, the patent says the exact opposite, noting that a complete device can be purchased "at any retail outlet" and simply installed with an application (*i.e.*, "System software"). '627 Patent at 25:13–24.

Sentegra's contention that its invention is an "ordered combination of hardware combined with specialized software," Opp. Br. at 18, fails for the same reason. All the hardware is generic, and courts reject purported "inventive concepts" that simply implement software on generic hardware that is used in its normal way. Mot. at 12–16 (citing cases).

Finally, Sentegra argues that "the prosecution history … shows that the short-range wireless hardware was used in a non-generic way." Opp. Br. at 15 (citing *Katz*, 2016 WL 1179218, at *6). Sentegra is incorrect. The prosecution history excerpt cited by Sentegra merely compares the claims to the prior art under 35 U.S.C. §§ 102–03, which Sentegra admits is a "different" issue. *Id.* at 11–12. The PTO never said that the short-range wireless hardware is non-generic. Nor did the PTO cite the short-range wireless hardware in explaining its allowance of the claims. *See* Silbersher Decl. Ex. C. at 2–3. Even the applicant's own argument to the PTO did not assert that the hardware was non-generic (*see* Opp. Br. at 16); it simply touted the alleged novelty of using such hardware (described generically) to perform a particular transaction.

Sentegra also faults Samsung for ignoring "the machine-or-transformation test." *Id.* at 12–13. But there is good reason for that. While the Supreme Court called it a "useful and important clue" in *Bilski v. Kappos*, 561 U.S. 593, 604 (2010), *Alice* never mentioned this test, and post-*Alice* courts frequently do not rely on it when analyzing computer-related patents. *See, e.g.*, *TNS*, 2016 WL 817447. In any event, this test yields the same result as the *Alice* test, for similar reasons. Specifically, the claims are not "tied to a particular machine." Opp. Br. at 12. They are tied to a generic "wireless handheld device" with generic hardware. *See* Mot. at 15. This does not pass the machine-or-transformation test. *See Ultramercial*, 772 F.3d at 716 (holding that claims "tied" to "a general purpose computer" do not satisfy the machine-or-transformation test); *Affinity Labs*, 2015 WL 3757497, at *10 (applying abstract idea in a "wireless handheld device operating as a ubiquitous information transmitted medium" fails test).[3]

Finally, Sentegra argues that the claims do not preempt "all instances of the purported abstract idea." Opp. Br. at 13. But this is not the test. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (finding claims invalid even if they "do not preempt all" implementations); *Alice*, 134 S. Ct. at 2353 (Section 101 analysis turns on "whether the balance of the claim adds 'significantly more'" to the abstract idea, not on complete preemption). "[L]imiting ... an abstract idea to a particular technological environment" "is not enough." *Id.* at 2358; *see Shortridge v. Found. Constr. Payroll Serv., LLC*, 2015 WL 1739256, at *14 (N.D. Cal.

[3] In contrast to the claims, the '627 Patent specification contains an embodiment—a "Directed Purpose System device"—that is purportedly a "particular machine." *See* '627 Patent at 33:26–55:15; *compare* Fig. 5 (figure of "Installed Software" module on a PDA) *with* Fig. 19 (figure of a "Directed Purpose System device"). But Sentegra did not claim the "Directed Purpose" device in this patent; instead it claimed a pre-existing, generic wireless mobile device and merely added software instructions. *See, e.g.*, *id.* at 25:13–24 ("Initial User Setup at Time of Purchase").

Apr. 14, 2015) (holding that claims to "'electronic recordkeeping'… applied in the context of public works labor management using generic computer equipment" was an improper attempt to limit to one field of use); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 2015 WL 3883958, at *4 (M.D. Fla. June 24, 2015) ("[T]he abstract idea remains unpatentable despite the patent's effort to limit the invention to one field (health information) and to one technology (a computer).").

The limitations Sentegra relies on do not add "significantly more" because, as explained above (1) the short-range wireless hardware (and other claimed hardware) is generic; and (2) the "specialized software" for "validating a ticket" does not address a problem "rooted in computer technology."[4] The "abstract idea identified" here is simply applied "to a generic, electronic device—in this case, a wireless cellular telephone device operating as a 'ubiquitous, information-transmitting medium, not a novel machine.'" *Affinity Labs of Texas, LLC v. DirecTV, LLC*, 109 F. Supp. 3d 916, 939 (W.D. Tex. 2015) (quoting *Ultramercial*, 772 F.3d at 716–17); *Epic Tech., LLC v. Fitnow, Inc.*, 2015 WL 8160884, at *5 (D. Utah Dec. 7, 2015) (holding that it was not inventive under *Alice* to incorporate an "RF ID reader … into any existing handheld device including a PDA" and "cell phone" because these are "generic" "computing device[s]").[5]

II. The '627 Patent's claims are indefinite for containing both apparatus and process limitations.

A. The Court should address the *IPXL* issue before a *Markman* hearing.

Sentegra's assertion that "[i]t is improper to invalidate a claim under *IPXL* before the *Markman* hearing," Opp. Br. at 20, is baseless. Sentegra does not dispute that indefiniteness is

[4] As recently as January of this year, Sentegra publicly asserted on its own website that "All mobile smart devices capable of making secure transactions are patented by (US Patent #US8706627 B2)." Irwin Ex. 3. While Samsung does not agree with this statement, Sentegra certainly does not recognize any limitations on the breadth of its patent.

[5] Sentegra argues that, except for claim 1, the claims provide further bases for eligibility but Sentegra relies on (1) limitations in claims 4, 11–16 about communicating with a point-of-sale using short-range hardware; and (2) biometric device limitation in claims 6, 16. *See* Opp. Br. at 18–20. The former is the same argument that Sentegra advances for all claims, and fails for the reasons addressed in this reply brief. The latter was already addressed in Samsung's opening brief. *See* Mot. at 16–18.

an issue of law. *See* Mot. at 20 (citing cases). Nor does Sentegra attempt to distinguish the cases holding that this issue can be addressed before a *Markman* hearing—including one in this District concerning the '627 Patent. *See id.*[6] Sentegra cites no cases finding this improper; it merely asserts that waiting for a *Markman* hearing is what "Courts typically" do. Opp. Br. at 20. But even if that is true, there is no need for full-blown *Markman* proceedings on claim terms that have nothing to do with the indefiniteness issue. The parties have had ample opportunity to argue this concrete, narrow legal issue, and it is ripe for decision now.

B. The '627 Patent's claims improperly include several process steps.

Samsung identified multiple method limitations in the purported apparatus claims of the '627 Patent that render them indefinite. Mot. at 21–25. Sentegra argues that these method limitations only identify the device's capabilities: they "simply explain what happens ***when*** that microprocessor is 'executing' the program instructions." Opp. Br. at 2 (emphasis added). Sentegra repeatedly distorts the claim language by adding "when" in order to create the false impression that the limitations indicate a capability. *See id.*; 4 ("Claim 1 requires program instructions that ***when*** executed"); 21 ("***when*** the microprocessor is ... 'executing'"); 22 ("***when*** the software is executed"); 22 ("***when*** the microprocessor is ... executing") (emphases added).

The claims do not say "when executed." In fact, Sentegra amended the claims during prosecution to delete this capability language. A previous version of the claims indicated that "computer program instructions" took the claimed actions "*when executed*." But Sentegra amended them to say "executing." Irwin Ex. 5 at 3. As issued, the claims indicate that the microprocessor, executing the instructions, "accesses, "requests," etc. The "*executing*" clause

[6] Sentegra wrongly asserts that Samsung distorted Sentegra's position in its case against LG. Opp. Br. at 20. At no point did Samsung suggest that "*Sentegra* agreed" that the *IPXL* issue should be decided before claim construction. Mot. at 20. Samsung cited the *Court's* decision in *LG* to support using the same procedure here over Sentegra's identical objection.

thus modifies the method steps and does not identify a mere capability.

The grammatical difference can be shown by analogy: (A) "*A theater, checking tickets before the show, requests to see your ticket*," versus (B) "*A theater, when checking tickets before the show, requests to see your ticket*." Sentence (A) describes a present action, with the "checking" clause providing further context for the action. Sentence (B) describes the theater's capability, with the "when checking" clause indicating that the action may happen in the future.

Sentegra also relies heavily on *UltimatePointer*, arguing that the claim language in that case is "strikingly identical." Opp. Br. at 21–23. Sentegra focuses on the fact that claim language in *UltimatePointer* and in the '627 Patent both contain gerunds. *See id.* at 22 (comparing "generating" in *UltimatePointer* to "executing" in the '627 Patent). But Samsung's motion does not rely on the "executing" limitations. Instead, the present tense active verbs—"accesses," "requests," etc.—are the improper method steps. *See* Mot. at 22–24. The gerunds simply modify these active verb clauses, which are absent in *UltimatePointer*.

Sentegra also does not dispute that other limitations in the '627 Patent clearly recite capability by using different claim language. *See* Mot. at 23. Sentegra's only answer to this point is to baldly assert that it is "irrelevant" in view of *UltimatePointer*. Opp. Br. at 23. But *UltimatePointer* did not present this situation, and Sentegra does not try to distinguish the case that relied on this fact. Mot. at 23 (citing *E-Watch Inc.* case).

Finally, Sentegra's point that the PTO rejected prior versions of the claims under *IPXL* is irrelevant because, to overcome that rejection, the claims were amended to include capability language: "*encoded with* various set of executable computer instructions." Opp. Br. at 25 (emphasis added). But the ***issued*** claims lack this language. That the PTO, years later, failed to reassert the *IPXL* objection does not change the result here. *See* Mot. at 21–25 (citing cases).

Respectfully submitted,

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